

<p>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</p> <p style="text-align: center;"><b>STAFF REPORT</b></p>	Hearing Date/Agenda Number P.C.: February 27, 2002      Item: 4.d.	
	File Number RA 01-06-005	
	Application Type Appeal of the Director's Decision to Grant a Reasonable Accommodation	
	Council District 9	
	Planning Area Willow Glen	
	Assessor's Parcel Number(s) 442-47-014	
PROJECT DESCRIPTION <span style="float: right;">Completed by: Teresa Estrada</span>		
Location: West side of Kilo Avenue approximately 80 feet northerly of Foxworthy Avenue (2990 Kilo Avenue)		
Gross Acreage: 0.13	Net Acreage: 0.13	Net Density: 7.7 DU/AC
Existing Zoning: R-1-8 Residence	Existing Use: Clean and Sober Living Environment	
Proposed Zoning: No Change	Proposed Use: Reasonable Accommodation for Clean and Sober Living Environment	
GENERAL PLAN <span style="float: right;">Completed by: TE</span>		
Land Use/Transportation Diagram Designation Medium Low Density Residential (8.0 DU/AC)		Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations
SURROUNDING LAND USES AND ZONING <span style="float: right;">Completed by: TE</span>		
North:	Single-family detached residence	R-1-8 Residence
East:	Single-family detached residence	R-1-8 Residence
South:	Single-family detached residence	R-1-8 Residence
West:	Single-family detached residence	R-1-8 Residence
ENVIRONMENTAL STATUS <span style="float: right;">Completed by: TE</span>		
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Negative Declaration circulated on		<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete
FILE HISTORY <span style="float: right;">Completed by: TE</span>		
Annexation Title: South Willow Glen No. 10		Date: July 17, 1952
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input type="checkbox"/> Approval with Conditions <input type="checkbox"/> Denial <input checked="" type="checkbox"/> Uphold Director's Decision	Date: _____	Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation
APPLICANT  Nancy Wilson Rainbow Recovery, Inc. P.O. Box San Jose, CA 954124	OWNER  Andrew Kubica 576 Calpella Drive San Jose CA 95120	

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PUBLIC AGENCY COMMENTS RECEIVED

Completed by: TE

Department of Public Works

None received.

Other Departments and Agencies

- 1) Police Department Memorandum from David Schaeffer dated February 13, 2002.
- 2) Code Enforcement Memorandum from Diane Dunn & Tony Swanson, dated January 31, 2002.

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GENERAL CORRESPONDENCE

- 1) Notice of Permit Appeal received from Nicholas P. Petredis, dated January 10, 2002;
- 2) Memorandum from Mary Gutierrez of Santa Clara County Office of the District Attorney, dated July 13, 2001.

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ANALYSIS AND RECOMMENDATIONS**BACKGROUND**

The matter under consideration is an appeal of the Director's decision to grant a Request for Reasonable Accommodation from Title 20 Section 20.24.020 of the San Jose Municipal Code, which restricts permitted uses in the R-1-8 Residential Zoning District to single-family residential uses and to residential care or service facilities for six or fewer persons with one or two resident staff as provided under state law.

On June 13, 2001, the applicants, Andrew Kubica and Nancy Wilson of Rainbow Recovery requested reasonable accommodation to allow the use of the subject house for up to 18 total occupants (comprised of 17 residents and 1 resident staff) as a Sober Living Environment (SLE) for residents in recovery from alcoholism addiction and chemical dependency. Rainbow Recovery's program focuses their services on helping mothers recover and eventually reuniting them with their children. The request for Reasonable Accommodation is primarily to allow the children to stay with their mothers. The applicant has indicated that approximately 25-30% of the overall number of residents will be comprised of children.

The subject 0.13-gross-acre site at 2990 Kilo Avenue is located in a single-family detached residential neighborhood. The facility, originally built as a single-family residence, is a two-story, approximately 1,755-square-foot structure (excluding garage) and contains six bedrooms, two bathrooms, a living room, a family room, a kitchen, and a dining room. The site is surrounded by single-family detached residential uses on all sides.

A community meeting was conducted by the applicant early in the process regarding the request on September 7, 2001. Staff was not notified of the meeting and is therefore unable to report on specific issues that were discussed.

On October 5, 2001, the Director of Planning issued a "Proposed Determination for Reasonable Accommodation" which granted a slightly reduced occupancy to allow for a total of 16 occupants including one resident staff, provided that no more than 5 residents would be licensed drivers (including staff). See the analysis section below for discussion regarding rationale for final determination about occupancy limitations.

A properly noticed public hearing was subsequently requested and held on October 17, 2001. The Director of Planning received public comments and testimony. Five area residents spoke in opposition to the request, giving testimony which included concerns for the inadequate provision of information provided by the applicant, overcrowding of individuals within the household, the lack of facilities within the residence, the lack of supervision for children of clients, and the erosion of the quality of life. A petition with 140 signatures against the request was also provided.

The Director's hearing was continued to November 14, 2001 to allow staff to evaluate and research additional testimony by the neighboring community and the applicant, particularly calls for Police service.

On December 14, 2001, the Director of Planning issued a Final Director's Decision granting Reasonable Accommodation to allow a total of 17 occupants comprising up to 16 residents and one resident staff. This final determination was based on the information contained in the application and facts submitted to date, which demonstrated that accommodation of the proposed number of residents will meet the City's ordinances and Guidelines for Reasonable Accommodation. It should be noted that this recommendation for the number of residents (17) was made in error. A total of 16 persons (15 residents plus one resident staff member) can be accommodated at the location based on square footage requirements and in order for the Request to comply with Building and Housing Code Requirements. See the analysis section below for additional discussion.

An Appeal of the Director's Final Decision was filed by Nicholas P. Petredis on January 10, 2002, on behalf of 26 neighbors objecting to the granting of the Request for Reasonable Accommodation. A copy of the appeal letter is attached. The primary grounds for the appeal are based on the opinions provided by Mr. Petredis that the Director's decision to grant the request for reasonable accommodation was not properly supported by the applicant's application, testimony or written administrative record and should therefore have been denied. See analysis for additional discussion.

## **ENVIRONMENTAL REVIEW**

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from further environmental review pursuant to Section 15301 of the California Environmental Quality Act since the proposal involves only a minor expansion of an existing facility or use.

## **GENERAL PLAN CONFORMANCE**

The proposed request for Reasonable Accommodation for a clean and sober living environment is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Medium Low Density Residential (8.0 DU/AC) in that no expansion of the existing structure or increase in the number of dwelling units is proposed.

## **COORDINATION**

Preparation of this memorandum was coordinated with the City Attorney's Office.

## **ANALYSIS**

Unlike many decisions made by the City affecting the use of private property, the granting of Requests for Reasonable Accommodation is not equivalent to a land use permit. There are several State and Federal

regulations that limit or prohibit the discretionary powers of local municipalities with regard to affording reasonable accommodations from land use requirements in order to make housing opportunities available to disabled persons. The analysis section of this report provides an overview of these regulations and relevant City ordinances and policies that provide the basis for decisions on these matters. A copy of a memo related to this issue dated November 2, 2001 from the City Attorney to the City Council is attached as background.

#### Overview of Laws Pertaining to Requests for Reasonable Accommodation

***Federal Fair Housing Act.*** The Federal Fair Housing Act Amendments, adopted in 1988, prohibit housing discrimination based upon disabilities or handicaps. Recovering drug addicts and alcoholics are specifically included in the definition of “handicapped” under this law. Most residents of Residential Care Facilities and Residential Service Facilities fall within the protection of these laws. These laws drastically limit the ability of cities to use their discretionary land use authority to regulate group living arrangements involving disabled persons. Both federal and state laws expressly make it unlawful to discriminate through public or private land use practices, decisions, and authorizations. Discrimination includes restrictive covenants, zoning, laws, denials of use permits, and other actions that make housing opportunities unavailable. Under the Federal Fair Housing Act, local governments are required to make "reasonable accommodation" to the needs of persons with disabilities in the application of its policies, procedures and regulations.

***Proposition 36.*** Proposition 36, also known as “The Substance Abuse and Crime Prevention Act”, was passed by 61% of California voters on November 7, 2000 and became effective on July 1, 2001. The intent of this initiative is to divert first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency into community-based substance abuse treatment programs. The passing of this initiative has created the need for additional sober living environments (SLEs) on a state wide basis and has likely increased the number of recent Requests for Reasonable Accommodation in San Jose.

***Group Home Ordinance.*** In 1998, the City Council adopted the “Group Home Ordinance” in order to bring the San Jose Municipal Code into compliance with federal and state legislation which requires that local zoning regulations not discriminate against persons with disabilities. Section 20.160.010 of the Zoning Code states that it is the policy of the City of San Jose to provide reasonable accommodation for persons with disabilities seeking fair access to housing in the application of its zoning laws, policies, and process. The principle of reasonable accommodation is an explicit requirement of the Federal Fair Housing Act.

Subsequently incorporated into the Zoning Ordinance in February 2001, the ordinance establishes the procedures for making a determination about the reasonableness of a requested accommodation and identifies the specific factors that must be considered prior to granting an accommodation.

***Santa Clara County Alcohol & Drug Residential Facilities Certification.*** As a result of the passage of Proposition 36, facilities such as those being requested are required to obtain approval from the District Attorney’s (DA) Office under the Santa Clara County Alcohol & Drug Residential Facilities Certification Program. Under County certification, the DA’s Office is responsible to monitor operation of the facility in order to compliance with applicable laws. The applicants have indicated that they have applied to modify their certification which was originally issued by the District Attorney’s Office on July 13, 2001 for 6 clients and 2 staff. The change to the certification is pending the outcome of the granting of this accommodation.

### Staff Response to Appeal of the Reasonable Accommodation Decision

As identified in Mr. Petredis' letter of appeal, the primary issues of concern are regarding the technical formal documentation of facts to support findings rather than with regard to the identification of specific concerns about the proposed use and/or impacts to adjacent uses. Mr. Petredis has also filed a similar appeal of the Director's decision to grant a Request for Reasonable Accommodation for a proposal located at 6136 Meridian Avenue which will be considered at the same Planning Commission hearing as the subject proposal.

As previously indicated, the Federal and State laws pertaining to the Fair Housing Act, pre-empt local jurisdictions from imposing regulations that would preclude or discriminate against group living arrangements involving "disabled" persons. Requests for Reasonable Accommodation are *not* land use permits. Therefore they cannot be subject to any of conditions such as those which might be issued for Conditional Use Permits or other discretionary land use permits. For this reason, the Zoning Ordinance requires the less restrictive "consideration" of certain factors rather than the making of required findings before the granting of a request for reasonable accommodation.

Consideration of the eight (8) factors as established under Zoning Ordinance and noted below are designed to elicit and consider the factual basis for the decision, and further provide a basic test for "reasonableness." Pursuant to the Zoning Ordinance, consideration the following factors are to be made on a case-by-case basis prior to the granting of a Request for Reasonable Accommodation:

1. Special needs created by the disability.
2. Potential benefit to the residents that can be accommodated by the requested modification.
3. Potential impact on surrounding uses.
4. Physical attributes of the property and structure.
5. Alternative accommodations which may provide an equivalent level of benefit to the applicant.
6. In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.
7. Whether the requested accommodation would impose an undue financial or administrative burden on the City.
8. Whether the requested accommodation would require a fundamental alteration in the nature of a City program.

Since the appeal letter focuses on the adequacy of "considerations" that were identified in the Director's Final Determination of Reasonable Accommodation, for purposes of clarity, this section of the report will be structured to identify the "eight consideration factors" for approval with inclusion of excerpts or summaries from the appeal letter that are relevant to each factor. A complete copy of the letter of appeal is also attached.

### **Factors 1 & 2: Special Needs and Benefits of the Accommodation**

Based on the passage of Proposition 36, the voters of California have mandated the diversion of first- and second-time non-violent defendants, probationary and paroled individuals charged with simple drug possession or drug use offenses from incarceration by requiring residency into community-based substance abuse treatment programs. The District Attorney's Office has indicated that such eligible individuals will need to participate by residing at such facilities for periods up to about six months in order to achieve

successful rehabilitation. Further, the DA's Office has indicated the need to establish a substantial number of new facilities beyond the number that currently exists, in order to provide supervised, short-term residential environments to comply with the mandate. Coupled with the fact that the Fair Housing Act recognizes that such individuals that are required to participate in such programs are determined to be "disabled", the Director can adequately deem that appropriate consideration has been made in that special needs are created by the disability. Further, there is a benefit to the residents that would be accommodated by the granting of the accommodation by providing a housing opportunity that might otherwise not be as affordable.

The appellant has indicated in his letter under item "A" that there has not been substantial evidence in the administrative record to justify the claim that the alternative accommodation for (17) seventeen residents is necessary to make housing available to the persons on whose behalf the application is made.

### **Factor 3: Potential Impact on Surrounding Uses.**

In assessing this factor, the Director must consider the potential impact on surrounding uses. More specifically, in this instance, an appropriate assessment would evaluate the impacts of such a facility which might be substantially different than those which would ordinarily be created by the "typical" occupancy of the existing house.

In this case, the Director has determined parking impacts caused by an increase in the number of residents could, if not appropriately restricted, impact adjacent uses. The subject property has the physical ability to accommodate two parked cars in the existing garage, two cars on the driveway and one car along the curb in front of the subject residence. Any number of regularly-parked cars in excess of five (5) could arguably affect or impact an adjacent property. It was for this reason, a limitation was included in the accommodation that the number of licensed drivers residing in the subject house (including staff) be limited to five so that parking would not visually or physically impact adjacent residential uses. The applicant has indicated that because of the nature of the proposed occupancy, many of the potential residents will not be allowed to or be able to drive, due to either the suspension of driver's licenses or economic inability to afford a private vehicle. The applicant has further stated that the restriction of occupancy to no more than five (5) licensed drivers would be feasible and not pose any undue hardship.

The appellant has indicated under item "B" and "I" in the appeal letter that no evidence was provided which clearly indicated that the garage is actually capable of housing two vehicles. Staff has determined that based on site visits and photographic evidence that the garage is capable of accommodating two cars. It should be noted that the applicant has indicated that the garage is often used for storage when occupancy is such that fewer than five cars are owned/used by the present residents. Several site visits by City Staff at various hours including evening and weekend periods, has consistently demonstrated that there is no evidence that the existing facility creates any parking impact in the neighborhood.

The appellant has also indicated under item "D" in the appeal letter that no standard is set forth in which to determine an over-concentration of facilities of residential care homes and that no analysis or survey was performed. Since residential care and service facilities of six (6) or fewer are allowed by right in the R-1-8 Residence Zoning District with no planning discretion, there is almost no way to document the proximity of the nearest SLE facility(s) not subject to a Reasonable Accommodation request. Therefore this is not a factor in our determination of over-concentration. The nearest approved Request for Reasonable Accommodation from the subject site is located east of the site approximately  $\frac{3}{4}$  of a mile away. Staff has determined that an over-concentration of facilities does not exist.

**Factor 4: Physical Attributes of the Property and Structure**

The Director must consider the physical attributes of the property and structure to make a determination of the appropriateness of a facility for the number of occupants in which accommodation is being requested.

The City's Housing Codes and the Uniform Building Codes identify a formula, whereby the appropriate maximum number of occupants of a residential structure can be determined based on the size (square footage). Based on the review of the floor plan and room size calculations provided by the applicant and subsequent application of the Housing Code requirements, the size and configuration of the subject house totaling 1,755 square feet (excluding the garage) can accommodate a maximum of 16 residents.

Section 17.20.270 of the San José Municipal Code and Section 503.2 of the Uniform Building Code, 1994 edition, establishes as minimum requirements (excluding closets) 70 square feet of sleeping area for two persons, 120 square feet of sleeping area for three persons; 170 square feet of sleeping area for four persons and an additional 50 square feet of sleeping area is required for each additional person.

The subject property includes six (6) bedrooms consisting of 112-, 99-, 159-, 235-, 104-, and 86-square feet. The house also includes an approximately 170-square-foot living room, an approximately 242-square-foot family room, and an approximately 204-square foot kitchen/ dining area, and two bathrooms.

The Housing Codes do not identify specific size requirements for the size of non-bedroom areas, but the subject house has a number of rooms for general living uses to accommodate 16 people, albeit perhaps not comfortably all at the same time in any single room. The rear yard, comprised of 1,450 square feet provides open space that would be equivalent, from a person-to-open space ratio, to many newer small lot single-family developments with a family of four.

The City's Guidelines for Review of Requests for Reasonable Accommodation allows the City to deny a request if it is determined that the building or additions were constructed without benefit of permit. The existing house originally included a 339 square foot patio room of questionable legality at the time the house was purchased by the applicant. This addition has since been removed by the applicant and appropriately factored into the final determination by the Director.

The appellant contends, under item "B" of the appeal letter that the existing house would not constitute a "spacious" environment for its residents. While the residence may not be "spacious", the housing codes identify that the required minimum standards are being met.

**Factor 5: Alternative accommodations that may provide an equivalent level of benefit to the applicant.**

Given that the proposed request for accommodation complies with the housing codes and provides adequate parking to avoid impacts to adjacent properties, the identification of alternative accommodations to provide an equivalent level of benefit to the applicant were considered unnecessary in this instance.

The appellant has not identified an issue with regards to this consideration.

**Factor 6: In the case of a determination involving a single-family dwelling, whether the household would be considered a single housekeeping unit if it were not using special services that are required because of the disabilities of the residents.**

In 1979 the California Supreme Court held in *Adamson v. City of Santa Barbara* that under the states constitution's protection of the right of privacy, a local community cannot limit the number of people living together in a single housekeeping unit. The court, however, did not attempt to define a "single-housekeeping unit". Under the proposed accommodation, no physical modifications to the house are proposed in a manner that would alter its physical function as a single-family house capable of supporting a living arrangement other than a single-housekeeping unit as defined by the San Jose Municipal Code. Residents of this structure will share common facilities and living areas as well as sharing typical household duties.

The appellant does not identify any specific issues with regard to the use of the premise as an entity other than a single housekeeping unit.

**Factor 7: Whether the requested accommodation would impose an undue financial or administrative burden on the City.**

The City's Code Enforcement Division has inspected the property and has determined that there are no current code violations since the demolition of the patio enclosure as previously described.

The appellant cites, under item "C" of the appeal letter, that testimony of calls to the Police Department, and that the occurrence of "numerous instances of unusual and inappropriate behavior around the subject property", was not incorporated in findings. Considering the subjective nature of the unusual and inappropriate behavior cited by the appellants, staff feels there is no evidence that these incidences are negative impacts to the neighborhood or related to the operation of Rainbow Recovery proposed facility.

Subsequent to the filing of the appeal and per staff's request, the Police Department verified calls for service over the last three years and has found that there have been four complaints regarding loud music (2), a "suspicious circumstance" (the details of which were unfounded) and the fourth call regarding an abandoned vehicle left in front of the subject site. The Police Department indicated that one or two calls per year for an address is about average and those associated with this site is not out of the ordinary.

The general obligation with monitoring the use and operation of the facility is the responsibility of the District Attorney's Office. Based on information from the DA's Office, the passage of Proposition 36 will likely result in many similar requests for such facilities distributed throughout communities in California.

The appellant questioned whether the applicant's statements about Police costs associated with this proposal due to lack of substantiated written documentation to the contrary. Based on the recent memorandum from the Police Department, Staff feels that adequate consideration on this matter has now been more accurately confirmed. In this case, there is no evidence that the proposed facility will cause any undue financial burden on the City.

**Factor 8: Whether the requested accommodation would require a fundamental alteration in the nature of a City program.**

The requested Reasonable Accommodation for 16 total residents will not require a fundamental alteration in the nature of a City program, because it will not violate either the Housing or Building Codes, it will not



require the modification if the existing structure that is compatible with the neighborhood and because the parking provided is sufficient for the requested residents.

## **CONCLUSION**

Request for Reasonable Accommodation such as this have often generated significant amounts of controversy. Because the nature of the proposed occupancy clearly would affect a legitimately identified protected class of “disabled” individuals as defined by the Federal and State Fair Housing Acts, the City has very limited ability to regulate or condition such requests in a manner that might otherwise appease the neighborhood. The City is not legally able to, nor should it outright deny a request for Reasonable Accommodation based on the emotional concerns of a neighborhood about the potential “undesirable” nature or characteristics of prospective future occupants. The City’s primary ability to exercise any amount of control for uses such as proposed is essentially limited to assurances that the Housing and Building Codes are properly met with regards to the safe, maximum occupancy of a structure. Additionally, the City may provide for reasonable safeguards to protect the neighborhood from physical impacts such as excessive parking. The appellants have not shown any evidence that is contrary to the existing public record. No evidence has been cited that the potential impacts of the proposed RA are such that it would change the existing single family neighborhood.

## **RECOMMENDATION**

Planning Staff recommends that the Planning Commission uphold the Director’s Final Determination and grant the Reasonable Accommodation Request for a Sober Living Environment to operate as described in the application for up to a total of 16 occupants, comprised of fifteen (15) residents and 1 resident staff. Of the said residents, no more than five (5) shall be licensed drivers.

## **Proposed Findings**

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The proposed project site is located in the R-1-8 Residential Zoning District.
2. This site has a designation of Medium Low Density Residential (8.0 DU/AC) on the San Jose 2020 General Plan Land Use/Transportation Diagram.
3. The subject site is developed with one (1) two-story single-family detached dwelling unit.
4. The subject site is used for residential purposes.
5. The subject site is approximately 5,684 square feet in area.
6. The persons on whose behalf the application is being heard are considered disabled under the Fair Housing Act.
7. The applicant has requested the following accommodation to a code, policy or practice of the City of San Jose: Non single-family use in an R-1-8 Residential Zoning District: Sober Living Environment (SLE) for fifteen (15) residents plus one (1) resident staff, for a total of sixteen (16) total occupants.

8. The residence is a two-story structure and consists of 6 bedrooms and two (2) bathrooms. The size and the physical configuration of the residence can accommodate a total of sixteen (16) persons and conform to the Building and Housing codes.
9. As represented in the floor plans dated September 25, 2001, none of the common areas of this residence (e.g., living room, dining room, and kitchen) have been altered or converted to bedrooms. The common areas are sufficient to support the use for sixteen (16) total occupants.
10. As represented in the site plan dated September 25, 2001, the 339-square foot enclosed porch is shown. This porch, constructed without benefit of proper building permits, has been demolished and adequate evidence has been provided demonstrating its demolition.
11. As represented in the site plan dated September 25, 2001, the facility can accommodate 4 cars on the site by using the garage for parking two (2) cars, by using the driveway apron for parking two (2) cars, and by using the street in front of the residence for one (1) car. The applicant has indicated the garage will be used for parking cars. With four (4) on-site parking spaces plus one (1) off-site space within 150 feet of the residence, the parking is deemed sufficient under the applicable guidelines.
12. The site is surrounded by single-family detached residences.
13. General Plan Policy specifies that residential social service programs should not be concentrated in a few areas, but should be distributed throughout the City. The nearest Request for Reasonable Accommodation is approximately  $\frac{3}{4}$  of a mile east of the subject site. This area does not currently have an over-concentration of similar facilities or residential care homes.
14. The requested Reasonable Accommodation is necessary to make housing available to the persons on whose behalf the application is made.
15. The request is exempt from Environmental Review pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines.
16. Appellants presented no evidence to show potential impact on surrounding uses.

### **Determination of Reasonableness**

The focus of the Reasonable Accommodation request must be an objective analysis of the impacts associated with the total number of residents from eight (8), including two (2) resident staff as allowed “by right” under State law, to sixteen (16), including one (1) resident staff.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance
3. The proposed project is in compliance with the California Environmental Quality Act.

4. The proposed request complies with Guidelines for Evaluating Requests for Reasonable Accommodation.

Finally, based upon the above-stated findings, the Planning Commission concludes the following:

1. The requested Accommodation will not impose an undue financial or administrative burden on the City.
  2. Preservation of the single-family character of the zoning district of the subject property is a legitimate fundamental City interest.
  3. The interior and exterior characteristics of the subject property, as well as the location of the property within the neighborhood and access to transportation and other services, are adequate to provide for the requested Reasonable Accommodation consistently with the single-family character of the neighborhood.
  4. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas.
  5. The requested accommodation granted for sixteen (16) total occupants will not require a fundamental alteration in the nature of a City program.
- c: Nicholas P. Petredis, 125 South Market Street Suite 1200 San Jose, CA 95113  
David Beyer, c/o Mary Gutierrez Bureau of Investigation 70 West Hedding Street San Jose, CA 95110

**Attachments:**

Appeal Letter, Director's Final Determination, Police Department comments, Code Enforcement comments, County District Attorney's Office comments, Memo from City Attorney to City Council, Guidelines for Review of Requests for Reasonable Accommodation, Location Map.